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NORTHLAND
COMMUNICATIONS
CORPORATION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA FEDERAL EXPRESS

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June 18, 1993

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

Re: Petition for Reconsideration Submitted by Northland
Communications Corporation MM Docket 92-266 Rate Regulation

Dear Ms. Searcy:

Enclosed herewith for filing with the Commission are one original and sixteen copies of the Northland Communications Corporation's Petition for Reconsideration, which is being filed in response to the Commission's Report and Order and Further Notice of Proposed Rulemaking released on May 3, 1993 in the above-referenced proceeding.

Very truly yours,

James A. Penney
Vice President and General Counsel

Enclosures

cc: Robert L. Pettit, Esq. (w/encl.)
Steven R. Effros, Esq. (w/encl.)

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JUN 21 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Implementation of Sections
of the Cable Television
Consumer Protection and
Competition Act
of 1992

Rate Regulation

MM Docket 92-266

JUN 21 1993

FCC MAIL ROOM

To: The Commission

PETITION FOR RECONSIDERATION SUBMITTED BY NORTHLAND
COMMUNICATIONS CORPORATION

Date: June 19, 1993

Northland Communications Corporation herein petitions the Commission to reconsider certain provisions of its Report and Order and Further Notice of Proposed Rulemaking released on May 3, 1993 (the "Order") in the above-referenced proceeding.

I. Introduction.

Northland Communications Corporation ("Northland") is a small MSO that serves approximately 150,000 subscribers in nine states. "Northland" is not a consolidated entity; rather it is composed of 15 separate cable operating companies, each of which is financed and operated on a stand-alone basis. Northland's systems all serve rural areas. Under the definition of "small cable operators" advanced by the Chief Counsel for Advocacy of the United States Small Business Administration, as reported at paragraph 566 of the Order, each of Northland's systems would be considered "small." Using the

Commission's definition (i.e., fewer than 1,000 subscribers), approximately 40 percent of Northland's systems would be considered "small." Notwithstanding the terminology used, Northland's systems are small businesses and will have extreme difficulty withstanding the revenue losses mandated by the rate regulation scheme developed in the Order. For that reason and the other matters discussed below, Northland petitions the Commission to reconsider the Order and to adopt a more balanced and fair approach to regulation. Northland believes the Commission must develop and adopt a regulatory scheme that does not unreasonably burden small cable operators.

II. The Commission's Regulatory Scheme Will Produce a Wide Array of Undesirable Consequences.

A. First Amendment Concerns - Preferred Speakers.

Foremost among the undesirable (and hopefully unintended) consequences of the Order is the profoundly chilling effect the rate regulation scheme will have on cable operators' First Amendment rights. Northland believes the Commission's actions in the Order are tantamount to the imposition of direct governmental controls on cable operators' speech and create categories of unfavored and preferred speakers.

Several Northland systems now provide a locally produced news and information show, "Northland Cable News", which in many cases is the only local news available on a daily basis to the systems' cable communities. Rate regulation will have a significant negative effect on the nature and content of the programming on Northland Cable News.

Because the Commission's benchmark scheme gives no consideration to the costs associated with the development and carriage of specialized, locally-produced programming, Northland may be forced to reduce the amount and/or scope of the programming or to discontinue the service completely. Future launches of Northland Cable News, which had been planned for over a dozen cable systems in 1993 and 1994, have been put on indefinite hold and may be scrapped altogether depending on the outcome of the Commission's actions in its reconsideration of the Order.

The Commission's regulatory scheme discourages the production


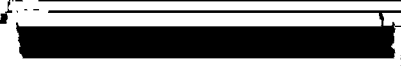
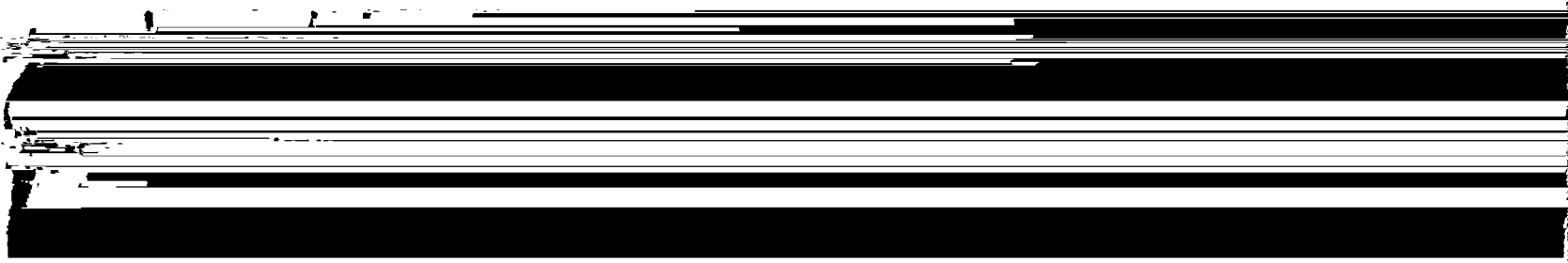
The imposition of these penalties has no basis in cost and provides a disincentive for local access, news and regional programming, which in turn limits local speakers as opposed to

a benchmark methodology that creates preferred speakers. The benchmark methodology could use, for example, density of subscribers per mile of plant or system channel capacity as factors that have a direct correlation to cost and make no preference for a particular category of speaker.

B. First Amendment Concerns - Editorial Discretion. The

sports channel on the basic tier would be forced under the Order to pass the cost of an additional sports channel to all subscribers, even those who do not desire more sports programming. Implementation of specialty tiers, however, offers the sports fan additional programming without imposing increased charges on the non-sports fan. Similarly, implementing a specialty tier allows a system to provide services such as MTV, which often is abhorred by the majority in small, rural communities, but strongly desired by others.

Because narrow-niche programming is subject to high license



carried on a low-penetrated tier of service. In this regard, the Commission's scheme is contrary to the underlying general philosophy of First Amendment jurisprudence and the heretofore articulated philosophy of the Commission, which has been to encourage the broadest diversity of speakers. The Commission's regulations should not deter operators from adding programming to their systems.

The single-price-per-channel adopted in the Commission's benchmark methodology not only renders a specialty tier uneconomic from a cost standpoint, but it also may lead to less equitable tier charges to the consumer. Consider the following example: A hypothetical 30-channel system currently contains a five-channel specialty tier consisting of American Movie Classics, USA Network, TNT, MTV, and Sports South. Analysis yields a "Maximum Initial Permitted Rate per Channel" of 62.9¢ (unbundled) which in turn leads to an allowable tier charge of approximately \$3.15. Because program vendors penalize operators for low-penetration specialty tier carriage, however, the program costs of this specialty tier would be more than double the \$3.15 allowable rate under the benchmark.

Two viable options exist for the cable operator. The specialty tier may be "melted" into a lower level of service, or the specialty tier channels may be eliminated altogether. The addition of the

The inadvertent effect of this disincentive provides inordinate protection to broadcasters and can be expected to diminish consumer welfare at an increasing rate over time. Because the variables of the Commission's benchmark grid (system size, total number of channels, and number of satellite channels) do not relate to the

and gives economic incentive to drop channels with higher program license fees.

Northland believes the Commission's scheme is directly contrary to the statutory requirements of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), which specifically contemplated a bifurcated regulatory structure. Reflecting a concern that cable service was becoming too expensive for some consumers, Congress clearly intended to insure the availability of a lower-priced, less inclusive "basic" level of

overall. Obviously, neither solution is in the consumer's best interest.

The following example illustrates the problem. Northland purchased a 3,700 subscriber system approximately eight years ago. The plant condition was old but in satisfactory condition. At the time of purchase, the system offered a 12-channel basic service for \$9.00 per subscriber per month, and the only other service offering was HBO. Northland has since completely rebuilt the cable system; every cable, amplifier, and connection is new. The system's capacity is now 59 channels, and the system offers a wide variety of services on 34 channels as well as access channels, services to schools, live church services, and governmental access. The basic service tier is composed of 12 channels and is sold for \$14.25 per month. This level of service is the sole service subscribed to by many, in particular, seniors and Hispanics (a Spanish language channel is on the basic service tier). The basic service tier also provides four satellite channels. The Commission's benchmark system would push the allowable rate for the basic service tier to \$7.56 per subscriber per month, which is below Northland's actual cost, especially considering the rebuild costs. (Ironically, the benchmark rate is even below the 1985 rate of \$9.00 per subscriber per month.) If the basic service tier were combined with the expanded basic tier, the problem could be solved. Unfortunately, many lower income subscribers probably would have to disconnect from cable. In this particular circumstance, however, Northland estimates the large majority would pay the higher

price because of the poor reception quality of over-the-air broadcast.

above, the benchmarks provide a financial penalty for operators adding additional services, especially local/regional and other non-satellite delivered programming. Without operator support through wide-spread distribution almost no fledgling network will be able to fully develop its services.

F. Industry Concentration Concerns. The Commission's regulations have a disproportionately burdensome effect on small cable operators and may cause a large number of business failures leading to a greater concentration of the cable industry in the hands of only a few large companies. The disastrous effect of the benchmark regulations on small cable operators has been discussed at length in the trade press³ and is commented on at greater length in Section IV of this Petition.

III. The Commission's Emphasis on Competitive Systems in Developing the Benchmarks Was Misplaced.

The Cable Act specifically requires the Commission to use seven factors in determining if operators' rates for the basic service tier are reasonable.⁴ The statute in no way directs or requires the Commission to focus on a particular factor or to eliminate or give diminished weight to other factors. Yet, the Commission admittedly failed to give anything but the most superficial consideration to operators' actual costs associated with the "obtaining, transmitting,

³ See e.g., Higgins, FCC Rate Rollbacks Clobbering MSOs, Multichannel News, May 31, 1993, p. 1.

⁴ Communications Act, 47 U.S.C. §543(b)(2)(C).

and otherwise providing signals carried on the basic service tier."⁵ Failure to adhere to the Cable Act's mandate is arbitrary and capricious and is clear grounds for setting aside the benchmark regulatory scheme set forth in the Order.

Even after placing an undue emphasis on competitive systems, the Commission failed to take the obvious and critical second step to determine if the competitive cable systems included in the Commission's survey data were making a reasonable profit or if their operations were reasonably expected to have long-term going concern viability. It appears, for example, that no investigation whatsoever was made to determine whether the sample competitive systems were providing a reasonably high level of customer service; whether the systems' physical plant was in a condition to continue to provide quality service for the long-run; whether the systems had the capacity to add additional services as they are developed; whether the systems had adequate capital reserves to utilize technological innovations; or whether the systems were otherwise financially capable of responding to a changing marketplace. The Commission also failed to exclude from the sample of competitive systems those engaged in short-term price wars⁶ or those subject to other non-equilibrium situations.

⁵ Communications Act, 47 U.S.C. §543(b)(2)(C)(ii).

⁶ The history of overbuilds in the cable industry is rife with examples of at- or below-cost rates designed to gain market share or to "greenmail" an incumbent operator into buying out the overbuilder.

Considering the huge variety of factors that affect cable systems' rates, the number of competitive systems used in the Commission's analysis was too small to permit the sort of regression analysis necessary to yield reliable results.

Northland's system in Lyons, Oregon faces direct competition from a cable system operated by the local telephone company. Although the system is subject to "effective competition" under the Commission's rules, the system's basic rate is approximately 75¢ in excess of the Commission's allowable benchmark. Attached to this Petition as Exhibit A is a copy of the calculations used to determine the maximum initial permitted rate per channel for the Lyons system.

If the Lyons system, which serves approximately 210 subscribers, were forced to stand financially on its own, even with its current rate structure, it would not generate sufficient cash flow to service its existing debt or to continue to provide the quality of service needed to meet strong competition. Even with rates that exceed the benchmarks, it is extremely unlikely the Lyons system could obtain the working capital loans necessary to expand its services or to upgrade or rebuild its facilities.

IV. The Commission's Regulatory Scheme Places Too High A Burden on Small Systems.

The Cable Act specifically directed the Commission to "reduce the administrative burdens and cost of compliance" on small cable systems.⁷ Notwithstanding that mandate, the Commission developed an

⁷ Communications Act, 47 U.S.C. §543(i).

incredibly convoluted and exceedingly difficult scheme that places an overwhelming burden on small systems.⁸ Moreover, the Commission made no effort to analyze the cost of compliance with its regulatory scheme, especially the costs imposed on small systems that may find it necessary to file cost-of-service showings to justify rates in excess of the benchmarks.

The cost-of-service showing rules initially proposed by the Commission cannot be considered a safety net to be used by small operators because of the high expense associated with making such a showing. Systems such as Northland's simply cannot afford to hire the battery of economists, accountants, attorneys and other experts needed to prepare and present a cost-of-service showing. The Commission may have fashioned a "remedy" that in reality is not available to those systems most in need of a cost-of-service proceeding to justify rates above the benchmark. Similarly, it is extremely unlikely that small franchising authorities will be able to undertake the expensive and time consuming process of holding cost-of-service hearings. Franchising authorities relying on the franchise fees paid by small operators are unlikely to have the financial ability to undertake complicated proceedings.

⁸ The complexity of the regulatory scheme and the burden on small systems was clearly illustrated by the Commission's own need to effect multiple revisions to the proposed forms and to release multiple clarifications of the rules.

V. Conclusion.

For the reasons stated above, Northland petitions the Commission to reconsider the benchmark methodology reflected in the Order and to modify the regulatory framework so that operators' free speech and editorial discretion is preserved and so the burden placed on small operators is lessened significantly.

Respectfully submitted,

NORTHLAND COMMUNICATIONS CORPORATION

By


James A. Penney, Vice President

SUMMARY OF MAXIMUM INITIAL PERMITTED RATE PER CHANNEL CALCULATIONS

Lyons (City of Lyons, OR only)

Cable Operator Name: **NCP-8**
 Franchise Authority: **Lyons, OR**

06/16/93

MAXIMUM INITIAL PERMITTED RATE PER CHANNEL **\$0.558**

MAXIMUM REGULATED RATE BY LEVEL OF SERVICE

	CHANNELS	M.I.P. RATE	EST. FRAN. FEES	TOTAL ALLOWED RATE	CURRENT RATE	SPREAD
Economy Basic	10	5.58	\$0.17	5.75	13.60	7.85
Satellite Basic	20	11.16	\$0.33	11.49	4.40	(7.09)
STANDARD PACKAGE (1&2)	30	\$16.74	\$0.50	\$17.24	\$18.00	0.76
Tier	0	\$0.00	N/A	0.00	\$0.00	0.00

TOTAL OPERATING AND CAPITAL COSTS FOR INSTALLATION & MAINTENANCE

\$138,267

% OF OPERATING COSTS ALLOCATED TO CUSTOMER EQUIP. & INSTALLS

60%

HOURLY SERVICE CHARGE ("HSC")

\$36.93

% OF LABOR HOURS ALLOCATED TO CUSTOMER EQUIP. & INSTALLS

40%

EXHIBIT A

**Worksheets for Calculating Maximum Initial Permitted Rate Per Channel
for Basic Tier or Cable Programming Service**

Lyons (City of Lyons, OR only)

Cable Operator Name: **NCP-8**
Franchise Authority: **Lyons, OR**

Community Unit ID : **0** **06/16/93**
Basic Tier Cable Prog. (Circle One)

Page 1 of 2

Worksheet 1**Calculation of Rates in Effect on Initial Date of Regulation and Benchmark Comparison**

Line	Line Description	Instruction	A Basic	B Tier 2	C Tier 3	D Tier 4	E Total
101	Tier Charge (Monthly)	Enter for all Tiers Offered	13.60	4.40	0.00		
102	Tier Channels	Enter for all Tiers Offered	10	20	0		
103	Tier Subscribers	Enter for all Tiers Offered	210	207	0		
104	Equipment Revenue (Monthly)	Enter in Basic Column Only	\$381				
105	Charge Factor	(Line 101 * Line 103 + Line 104A)	3,237	911	0		4,148
106	Channel Factor	Line 102 * Line 103	2,100	4,140	0		6,240
107	Charge per Channel	Line 105E / Line 106E					0.665
108	Franchise Fee Expense (Monthly)	Enter Only Fees Included in Line 101 Charges [See Worksheet Instructions]					\$143
109	Franchise Fee Deduction	Line 108E / Line 106E					0.023
110	Base Rate Per Channel	Line 107E - Line 109E					0.642
121	Benchmark Channel Rate	Enter from Attachment A					0.720
122	GNP-PI (current)	Enter from Survey of Current Business, Table 7.3, Line 5, most recent quarter					124.1
123	Inflation Factor	(Line 122E / 121.8) - 1 [121.8 = 3rd Qtr 1992 GNP-PI]					0.019
124	Adjustment Time Period	Enter Number of Months from 9/30/92 to Date of Current Rate					9
125	GNP-PI Time Period	Enter Number of Months from 9/30/92 to most recent GNP-PI Quarter					6
126	Time Factor	Line 124E / Line 125E					1.500
127	Inflation Adjustment Factor	(Line 123E * Line 126E) + 1					1.028
128	Adjusted Benchmark Rate	Line 121E * Line 127E					0.740

If Line 110E is less than or equal to Line 128E, skip to Worksheet 3 and enter Line 110E on Line 300.

If Line 110E is greater than Line 128E, complete Worksheet 2.

Worksheet 2**Calculation of Rates in Effect on September 30, 1992 and Benchmark Comparison**

Line	Line Description	Instruction	A Basic	B Tier 2	C Tier 3	D Tier 4	E Total
201	Tier Charge (Monthly)	Enter for all Tiers Offered	0.00	19.95	0.00		
202	Tier Channels	Enter for all Tiers Offered	0	24	0		
203	Tier Subscribers	Enter for all Tiers Offered	0	264	0		
204	Equipment Revenue (Monthly)	Enter in Basic Column Only	\$363				
205	Charge Factor	(Line 201 * Line 203 + Line 204A)	363	5,267	0	0	5,630
206	Channel Factor	Line 202 * Line 203	0	6,336	0	0	6,336
207	Charge per Channel	Line 205E / Line 206E					0.889
208	Franchise Fee Expense (Monthly)	Enter Only Fees Included in Line 201 Charges [See Worksheet Instructions]					\$137
209	Franchise Fee Deduction	Line 208E / Line 206E					0.022
210	Base Rate Per Channel	Line 207E - Line 209E					0.867
220	Benchmark Channel Rate	Enter from Attachment A					0.845
230	Reduced Base Rate per Channel	Line 210E * 0.9 [Ten Percent Reduction]					0.780

If Line 210E is less than or equal to Line 220E, go to Worksheet 3 and enter Line 220E on Line 300.

If Line 210E is greater than Line 220E, go to Line 230.

Cable Operator Name: **NCP-8**
 Franchise Authority: **Lyons, OR**

Community Unit ID : **0** **06/16/93**
 Basic Tier Cable Prog. (Circle One)

Page 2 of 2

Worksheet 3
Removal of Equipment and Installation Costs

Line	Line Description	Instruction	
300	Base Rate Per Channel	Enter from Worksheet 1 (Line 110E) or Worksheet 2 (Line 220E or 230E)	0.642
301	Equip. & Install. Cost	Enter from Line 34 of Equipment Worksheet (Step G)	523
302	Channel Factor	Enter from Worksheet 1 (Line 106E) or Worksheet 2 (Line 206E)	6,240
303	Cost Per Subscriber-channel	Line 301 / Line 302	0.084
304	Base Service Rate per Channel	Line 300 - Line 303	0.558

If Line 300 entered from Worksheet 1, go to Line 600 and enter Line 304.

If Line 300 entered from Worksheet 2, go to Worksheet 4.

Worksheet 4
Adjustment for Inflation

Line	Line Description	Instruction	
400	Base Service Rate per Channel	Enter from Line 304	0.558
401	Inflation Adjustment Factor	Enter from Worksheet 1, Line 127E	1.028
402	Adj. Base Ser. Rate per Channel	Line 400 * Line 401	0.574

If adjusted base service rate (Line 402) reflects current number of regulated channels, satellite channels, and subscribers, go to Line 600 and enter Line 402.

If it does not, complete Worksheet 5.

Worksheet 5
Adjustment for Changes in Number of Regulated Channels

Line	Line Description	Instruction	
500	Adj. Base Ser. Rate per Channel	Enter from Worksheet 4 (Line 402) or Worksheet 3 (Line 304)	0.574
501	Benchmark Chan. Rate (Baseline)	Enter from Worksheet 2 (Line 220E)	0.845
502	Benchmark Chan. Rate (New)	Enter from Worksheet 1 (Line 121E)	0.720
503	Channel Adjustment Factor	(Line 502 - Line 501) / Line 501	(0.148)
504	Ch. Adj. Base Ser. Rate per Ch.	Line 500 * (1 + Line 503)	0.489

If Worksheet 5 was used, enter Line 504 on Line 600.

600	Maximum Initial Permitted Rate per Channel	Enter from Line 304, 402, or 504	0.558
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